



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Michael Cerrato :

ORDER

Tax Registry No. 957446 :

OF

Police Service Area 2 :

DISMISSAL
-----X

Police Officer Michael Cerrato, Tax Registry No. 957446, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2017-18175, as set forth on form P.D. 468-121, dated November 9, 2017, and amended on December 11, 2018, and after a review of the entire record, having pleaded Guilty, is found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Michael Cerrato from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE:

4/5/19

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>



POLICE DEPARTMENT

February 26, 2019

-----X
In the Matter of the Charges and Specifications :

Case No.

- against - :

2017-18175

Police Officer Michael Cerrato :

Tax Registry No. 957446 :

Police Service Area 2 :

-----X
At:

Police Headquarters
One Police Plaza
New York, New York 10038

Before:

Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Michael Cerrato, while off-duty and assigned to the 34th Precinct, on or about November 4, 2017, in Auburn New York, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did wrongfully discharge approximately two (2) rounds from a firearm at an occupied Domino's Pizza delivery car.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-PROHIBITED
CONDUCT

2. Said Police Officer Michael Cerrato, while off-duty and assigned to the 34th Precinct, on or about November 4, 2017, in Auburn New York, did wrongfully consume an intoxicant to the extent that said Police Officer was unfit for duty.

P.G. 203-04, Page 1, Paragraph 2

FITNESS FOR DUTY

3. Said Police Officer Michael Cerrato, while off-duty and assigned to the 34th Precinct, on or about November 4, 2017, in Auburn New York, did wrongfully consume an intoxicant to the extent that said Police Officer was unfit for duty, while armed.

P.G. 203-04, Page 1, Additional Data

FITNESS FOR DUTY

4. Said Police Officer Michael Cerrato, while assigned to the 34th Precinct, on or about and between November 1, 2016 and January 24, 2018, after acquiring a Smith & Wesson handgun, said Police Officer wrongfully failed and neglected to report said acquisition to the Department and also failed to follow all required Department and New York State Police procedures for said handgun. *(As amended)*

P.G. 204-08, Page 1, Paragraph 3

FIREARMS-GENERAL
REGULATIONSP.G. 204-10, Page 1, Paragraphs 6, 8, 9;
Page 4, Additional Data

HANDGUN PURCHASE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 28, 2019. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find that no mitigation is warranted, and recommend that Respondent be dismissed from the New York City Police Department.

SUMMARY OF EVIDENCE IN MITIGATION

This mitigation hearing stems from an off-duty incident during which Respondent, who was intoxicated at the time, wrongfully discharged his firearm two times in the direction of a moving Domino's pizza delivery car.

Specifically, on November 4, 2017, Respondent was in Auburn, NY for a weekend military drill with the Army National Guard. Respondent testified that he completed his drill that day at about 1730 hours, then returned to his hotel room to change. He spent the evening alone in multiple local bars, where he consumed several beers and scotches over the next few hours. According to Respondent, there were issues connected to [REDACTED] that were on his mind. (Tr. 24-26, 29-30, 40-42)

Respondent testified that as a result of all the alcohol he consumed that evening, his memory became "fuzzy." He remembered being in a third bar where he was drinking scotch, and the next thing he could recall was being in custody at the [REDACTED] police station at about 0030 hours. Respondent claimed that he had no recollection of what occurred during that intervening two-hour time period. (Tr. 29-31, 44-45) The details of what transpired, including how Respondent twice discharged his firearm at a moving vehicle, were contained in a report prepared by the Department's Use of Force Review Board (Dept. Ex. 6), as well as the affidavits of civilian witnesses on the scene and the responding police officers (Dept. Exs. 1-5).

According to those accounts, which Respondent does not dispute, at approximately 2326 hours, a visibly intoxicated Respondent staggered onto Dill Street in front of a Domino's Pizza store. He fell against the store-front window of the Domino's, then walked into the street. A pizza delivery car happened to be driving eastbound on Dill Street at the time; the driver of that vehicle reported no prior dispute or encounter with Respondent. As the car passed, Respondent,

for no apparent reason, fired two rounds from his Glock 26 in the direction of the vehicle. No one was hit, nor was there any property damage discovered; two shell casings were later recovered from the scene. Within minutes, [REDACTED] police officers responded to the location and placed Respondent under arrest. Respondent's off-duty firearm, which he used to fire the shots, was recovered from his person.

On January 11, 2018, Respondent pled guilty to misdemeanor reckless endangerment in [REDACTED] City Court, and was sentenced to a conditional discharge; he underwent substance abuse treatment and paid various fines and fees (Resp. Ex. B). In connection with the plea negotiations on the criminal case, Respondent's counsel prepared a pre-pleading memorandum, including many character letters in support of Respondent; a disc containing that package was admitted into evidence (Resp. Ex. E). Also admitted was an additional letter from Respondent's commanding officer in the National Guard (Resp. Ex. D), a Certificate of Relief from Disabilities (Resp. Ex. C), and a letter confirming Respondent's qualification to continue to be certified as an Emergency Medical Technician (Resp. Ex. A).

Respondent admitted that he failed to notify the Department regarding another firearm, a Smith & Wesson that he purchased in November of 2016. Respondent testified that he purchased it for [REDACTED] but never transferred it to [REDACTED] name or listed it with the Department. (Tr. 27-28)

Respondent testified that this incident continues to rest heavily on his mind, and that he's ashamed of his actions. He stated that he would like to remain with the Department, and that he believes he can continue to be an asset. (Tr. 39)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 7, 2015. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

The Advocate recommends that Respondent be dismissed from the Department. Counsel for Respondent asks that Respondent be given a second chance, and that he be allowed to remain with the Department. Based on the egregious nature of Respondent's misconduct, and the high public trust police officers must fulfill, I agree with the Advocate's recommendation that dismissal is appropriate here.

Section 203-04 of the Patrol Guide states:

Any misconduct involving a member's misuse of a firearm while unfit for duty due to excessive consumption of, and intoxication from, alcohol will result in that member's termination from the Department. Exceptional cases will be determined by the Police Commissioner, on a case by case basis.

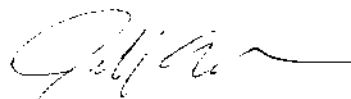
Counsel for Respondent argues that the events of November 4, 2017 were an "outlier," an aberration from all the good things Respondent has done in his life. Counsel notes how Respondent is dedicated to helping others, as evidenced by his work as a paramedic and with the National Guard. Many letters submitted on behalf of Respondent attest to his being a caring, hardworking individual, committed to serving the community. At trial, Respondent willingly accepted responsibility for his actions, and expressed genuine remorse.

Unfortunately, these positive character attributes, as described in the letters, were not enough to prevent what occurred on November 4. After completing his drill that day,

Respondent became intoxicated to the extent that he couldn't even recall a significant portion of that evening. He consumed an excessive amount of alcohol that night even though he was scheduled for another drill at 0800 hours the following morning. In that intoxicated condition, Respondent twice discharged his firearm in the direction of a moving vehicle. With his actions, Respondent created a dangerous and inexcusable risk that someone could have been seriously injured.

After listening to the testimony of Respondent, and carefully reviewing each of the exhibits submitted, I am not persuaded that mitigation is warranted. There are no exceptional circumstances here that would justify a departure from the presumptive penalty of dismissal. Respondent, while unfit for duty due to his excessive consumption of alcohol, dangerously discharged two rounds in the direction of a moving vehicle. Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials